

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOUTHEASTERN LEGAL)
FOUNDATION, INC.,)
Plaintiff,) CIVIL ACTION
v.) FILE NO. _____
UNITED STATES)
DEPARTMENT OF JUSTICE,)
Defendant.)

COMPLAINT

Plaintiff Southeastern Legal Foundation, Inc. (SLF), for its Complaint against Defendant United States Department of Justice (DOJ), states as follows:

INTRODUCTION

1. The Freedom of Information Act (the FOIA), 5 U.S.C. § 552, enacted in 1966, provides the public with a right of access to federal agency records.

2. The people must know what the government is doing. “Open government has been recognized as the best insurance that government is being conducted in the public interest.”¹ Our Founding Fathers’ commitment to open

¹ *Am. Fed’n of Gov’t Emp.’s v. Rosen*, 418 F. Supp. 205, 207 (N.D. Ill. 1976).

government and the public's right to information can be seen in the First Amendment, which "protects not only the right of citizens to speak and publish, but also to receive information."² The FOIA is "an affirmative congressional effort to give meaningful content to constitutional freedom of expression." *See S. Rep. No. 93-854*, at 153-54 (May 16, 1974).

3. This is an action brought pursuant to the FOIA to compel Defendant to produce records responsive to an outstanding FOIA request submitted to the Federal Bureau of Investigation (FBI), a component of Defendant, on May 14, 2019.

4. In its FOIA request, SLF sought public records relating to communications regarding the collection of memos known as the "Steele Dossier."

5. Defendant has failed to meet the statutory deadline for its response in the form of a determination to the FOIA request dated May 14, 2019 and received by Defendant on May 20, 2019, because it failed to respond within twenty days (not including weekends and federal holidays).³ *See 5 U.S.C. § 552(a)(6)(A)(i).* Thirty-

² *Providence Journal Co. v. FBI*, 460 F. Supp. 762, 776 (D.R.I. 1978) (overturned on other grounds).

³ DOJ's regulations state that "[w]henever the statutory time limit for processing a request cannot be met because of 'unusual circumstances,' as defined in the FOIA, and the component extends the time limit on that basis, the component shall, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 working days, the

one days not including weekends and federal holidays have lapsed since Defendant received the FOIA Request. The FOIA allows Defendant to request a ten day extension, which it failed to do. *See* 5 U.S.C. §552(a)(6)(B)(i). Regardless, the statutory time limit for an extension has also lapsed.

6. Accordingly, SLF files this lawsuit to compel Defendant to comply with the FOIA.

THE PARTIES

7. Plaintiff Southeastern Legal Foundation is a national nonprofit, public interest law firm and policy center that advocates constitutional individual liberties, limited government, and free enterprise in the courts of law and public opinion. SLF's programs include analysis, publication, and a transparency initiative seeking public records relating to communications regarding the "Steele Dossier."

8. Defendant Department of Justice is a federal agency headquartered in Washington, D.C. Defendant has possession, custody, and control of the records to which SLF seeks access.

component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing." 28 C.F.R. 16.5(c).

JURISDICTION AND VENUE

9. SLF brings this lawsuit pursuant to the FOIA. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the district in which SLF has its principal place of business, and 28 U.S.C. § 1331, because the resolution of disputes under the FOIA presents a federal question.

10. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the district in which SLF has its principal place of business, and 28 U.S.C. § 1391(e), because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of Georgia.

FACTUAL BACKGROUND

11. In a letter dated May 14, 2019, SLF submitted a FOIA request by certified mail to the FBI (the FOIA Request).

12. In the FOIA Request, SLF sought the following records:

All records of communication (including emails on both .gov and non-.gov accounts, text messages, and instant chats) between the office of the Director of Central Intelligence, including but not limited to former CIA Director John Brennan, and the office of the Director of the Federal Bureau of Investigation, including but not limited to former FBI Director James Comey, regarding the collection of memos known as the “Steele Dossier.”

All records of communication (including emails on both .gov and non-.gov accounts, text messages, and instant chats) between the office of the Director of National Intelligence, including but not limited to former ODNI Director James Clapper, and the office of the Director of

the Federal Bureau of Investigation, including but not limited to former FBI Director James Comey, regarding the collection of memos known as the “Steele Dossier.”

13. SLF sought a waiver of search, review, and reproduction fees pursuant to the FOIA (5 U.S.C. § 552(a)(4)(A)(iii)) because the information sought was in the public interest, was likely to contribute to public understanding of the operations and activities of government, and because SLF had no commercial interest in the information.

14. The United States Postal Service (USPS) Tracking System shows that the FBI received the FOIA Request on May 20, 2019.

15. The FBI responded to SLF’s request in two letters, both dated June 6, 2019.

16. The first FBI letter dated June 6, 2019, advised SLF that its request for “all records of communication between ODNI Director James Clapper and FBI Director James Comey on collection of Christopher Steele memos (May 2016 to February 2017)” had been designated as FOIPA Request No. 1437642-000.

17. The second FBI letter dated June 6, 2019, advised SLF that its request for “all records of communication between CIA Director John Brennan and FBI Director James Comey on collection of Christopher Steele memos (May 2016 to February 2017)” had been designated as FOIPA Request No. 1437636-000.

18. At the time of this Complaint, 31 days, excluding weekends and federal holidays, have now lapsed since the FBI received the FOIA Request on May 20, 2019.

19. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SLF is deemed to have exhausted its administrative remedies with respect to the FOIA Request.

COUNT I
(Violation of the FOIA, 5 U.S.C. § 552)

20. SLF realleges paragraphs 1 through 19 as if fully stated herein.

21. Defendant is in violation of the FOIA by failing and/or refusing to employ search methods reasonably likely to lead to the discovery of records responsive to SLF's request and, accordingly, failing and/or refusing to produce any and all non-exempt records responsive to the request.

22. SLF is being irreparably harmed by Defendant's violation of the FOIA and will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

23. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SLF is deemed to have exhausted its administrative remedies with respect to the FOIA Request because Defendant was required to make a final determination of SLF's FOIA Request within the time limits set by FOIA. Accordingly, determination was due by July 1, 2019 at the latest.

24. Because Defendant failed to make a final determination on SLF's FOIA Request within the time limits set by the FOIA, SLF is deemed to have exhausted its administrative appeal remedies.

PRAYER FOR RELIEF

25. Enter an immediate order directing the State Department to preserve all records potentially responsive to FOIPA Request Nos. 1437642-000 and 1437636-000, and prohibiting Defendant, its employees, agents, or representatives from transporting, concealing, removing, destroying, or in any way tampering with records potentially responsive to said request;

26. Enter an order directing Defendant to conduct searches for any and all records responsive to the FOIA Request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the FOIA Request;

27. Enter an order directing Defendant to produce, by a certain date, any and all non-exempt records responsive to the requests and a *Vaughn* index of any responsive records withheld under claim of exemption;

28. Enter an order enjoining Defendant from continuing to withhold any and all non-exempt records response to the FOIA Request;

29. Award reasonable attorneys' fees, costs, and expenses; and

30. Grant any and all other relief as this Court deems just and proper.

Respectfully submitted this 2nd day of July, 2019.

Southeastern Legal Foundation

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